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**CAPITAL VILLAGE
DEVELOPER AGREEMENT**

by and between the

CITY OF RANCHO CORDOVA

and

BEAZER HOME HOLDINGS CORP.

And

HEARTHSTONE MULTI-ASSET ENTITY B, L.P.

RELATIVE TO CAPITAL VILLAGE

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DEVELOPMENT AGREEMENT RELATIVE TO CAPITAL VILLAGE

This Development Agreement is entered into as of this 4th day of May, 2005, by and between the CITY OF RANCHO CORDOVA, a municipal corporation ("City"), BEAZER HOMES HOLDINGS CORP., a Delaware Corporation, and HEARTHSTONE MULTI-ASSET ENTITY B, L.P., a California limited partnership (collectively, "Landowner"). City and Landowner are hereinafter collectively referred to as the "Parties" and singularly as "Party."

RECITALS

1. **Authorization.** To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Section 65864, et seq., of the Government Code (the "Development Agreement Statute"), which authorizes the City and any person having a legal or equitable interest in the real property to enter into a development agreement, establishing certain development rights in the Property which is the subject of the development project application.

2. **Property.** Landowner holds a legal or equitable interest in certain real property located in the City of Rancho Cordova, County of Sacramento, more particularly described in Exhibit 1 attached hereto (the "Property"). Landowner represents that all persons holding legal or equitable interests in the Property shall be bound by this Agreement.

3. **Project.** Landowner has obtained various approvals from the City (described in more detail in Recital 6 below), including approval for a tentative subdivision map for a mixed use project known as Capital Village (the "Project") to be located on the Property.

4. **Public Hearing.** On February 24, 2005, the Planning Commission of the City of Rancho Cordova, serving as the City's planning agency for purposes of development agreement review pursuant to Government Code Section 65867, considered this Agreement and recommended approval of this Agreement to the City Council.

5. **Environmental Review.** On March 21, 2005, the City Council certified as adequate and complete the Mitigated Negative Declaration ("MND") for the Project. Mitigation measures were required in the MND and are incorporated into the Project and into the terms and conditions of this Agreement, as reflected by the findings adopted by the City Council concurrently with this Agreement.

6. **Project Approvals.** The following land use approvals (together the "Project Approvals") have been granted for the Property, which entitlements are the subject of this Agreement.

6.1. The Rancho Cordova General Plan, as adopted by the City on July 1, 2003 by City Resolution No. 04-2003, as amended on March 21, 2005, by City Resolution No. 35-2005-2005 (the "General Plan");

6.2. The Rezoning of the Property, approved by the City on March 21, 2005, by City Ordinance No. 06-2005;

6.3. The Tentative Subdivision Map for the Project (attached hereto as Exhibit 3), approved by the City on March 21, 2005, by City Resolution No. 35-2005;

6.4. This Development Agreement, as adopted by City Ordinance No. 19-2005 (the "Adopting Ordinance");

6.5. The approval of the Capital Village Special Planning Area ("SPA"), which contains design guidelines and specifications pertaining to the Project (attached hereto as Exhibit 4), as adopted by City Resolution No. 06-2005; and

6.6. The MND. The Mitigation Measures in the MND are incorporated into the Project and into the terms and conditions of this Agreement.

7. **Need for Services and Facilities.** Development of the Property will result in a need for municipal services and facilities, some of which services and facilities will be provided by City to such development subject to the performance of Landowner's obligations hereunder. With respect to water, pursuant to Government Code Section 65867.5, any tentative map approved for the Property will comply with the provisions of Government Code 66473.7.

8. **Contribution to Costs of Facilities and Services.** Landowner agrees to contribute to the costs of such public facilities and services as required herein to mitigate impacts on the community of the development of the Property, and City agrees to provide such public facilities and services as required herein to assure that Landowner may proceed with and complete development of the Property in accordance with the terms of this Agreement. City and Landowner recognize and agree that, but for Landowner's contributions to mitigate the impacts arising as a result of development entitlements granted pursuant to this Agreement, City would not and could not approve the development of the Property as provided by this Agreement and that, but for City's covenant to provide certain facilities and services for development of the Property, Landowner would not and could not commit to provide the mitigation as provided by this Agreement. City's vesting of the right to develop the Property as provided herein is in reliance upon and in consideration of Landowner's agreement to make contributions toward the cost of public improvements as herein provided to mitigate the impacts of development of the Property as development occurs.

9. **Development Agreement Ordinance.** City and Landowner have taken all actions mandated by, and fulfilled all requirements set forth in, the Development Agreement Ordinance of the City of Rancho Cordova, as set forth in the City Municipal Code.

10. **Consistency with General Plan.** Having duly examined and considered this Agreement and having held properly noticed public hearings hereon, the City finds and declares that this Agreement is consistent with the General Plan.

NOW, THEREFORE, in consideration of the mutual promises, conditions and covenants hereinafter set forth, the Parties agree as follows:

AGREEMENT

1. **Incorporation of Recitals.** The Preamble, the Recitals and all defined terms set forth in both are hereby incorporated into this Agreement as if set forth herein in full.

2. **Description of Property.** The property, which is the subject of this Development Agreement, is described in Exhibit 1 attached hereto ("Property").

3. **Interest of Landowner.** The Landowner has a legal or equitable interest in the Property. Landowner represents that all persons holding legal or equitable interests in the Property shall be bound by the Agreement.

4. **Relationship of City and Landowner.** It is understood that this Agreement is a contract that has been negotiated and voluntarily entered into by City and Landowner and that the Landowner is not an agent of City. The City and Landowner hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making the City and Landowner joint venturers or partners.

5. **Effective Date and Term.**

5.1. **Effective Date.** The effective date of this Agreement ("Effective Date") is _____, which is the effective date of City Ordinance No. 19-2005, adopting this Agreement.

5.2. **Term.** Upon execution, the term of this Agreement shall commence on the Effective Date and extend for a period of ten (10) years, unless said term is terminated, modified or extended by circumstances set forth in this Agreement. Following the expiration of the term, this Agreement shall be deemed terminated and of no further force and effect. Said termination of the Agreement shall not affect any right or duty created by City approvals for the Property adopted prior to, concurrently with, or subsequent to the approval of this Agreement.

5.3. **Automatic Termination Upon Completion and Sale of Residential Lot.** This Agreement shall automatically be terminated, without any further action by either party or need to record any additional document, with respect to any single-family residential lot within a parcel designated by the Project Approvals for residential use, upon completion of construction and issuance by the City of a final occupancy permit for a dwelling unit upon such residential lot and conveyance of such improved residential lot by Landowner to a bona-fide good-faith purchaser thereof. In connection with its issuance of a final inspection for such improved lot, City shall confirm that all improvements, which are required to serve the lot, as determined by City, have been accepted by City. Termination of this Agreement for any such residential lot as provided for in this Section 5.3 shall not in any way be construed to terminate or modify any assessment district or Mello-Roos Community Facilities District lien affecting such lot at the time of termination.

6. **Use of Property.**

6.1. **Right to Develop.** Landowner shall have the vested right to develop the Project in accordance with the terms and conditions of this Agreement, the Project Approvals,

and any amendments to any of them as shall, from time to time, be approved pursuant to this Agreement. Landowner's vested right to develop the Property shall be subject to subsequent approvals, provided that any conditions, terms, restrictions and requirements for such subsequent approvals shall not prevent development of the Property for the uses, or reduce the density and intensity of development, or limit the rate or timing of development set forth in this Agreement, so long as Landowner is not in default under this Agreement.

6.2. Permitted Uses. The permitted uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings, provisions for reservation or dedication of land for public purposes, location and maintenance of on-site and off-site improvements, location of public utilities and other terms and conditions of development applicable to the Property, shall be those set forth in this Agreement, the Project Approvals and any amendments to this Agreement or the Project Approvals. City acknowledges that the Project Approvals provide for the following land uses and approximate acreages for the Property:

- 827 single family residential units on 70.5592± acres;
- 27.5805± acres of retail/ commercial mixed use;
- 6.8030± acres of parks;
- 1.8703± acres of open space;
- 5.2393± acres of right of way for roads; and
- 4.9181± acres of landscape corridors;

all as set forth in Exhibit 3. Such uses shall be developed in accordance with the Project Approvals, as such Project Approvals provide on the Effective Date of this Agreement.

6.3. Moratorium, Quotas, Restrictions or Other Growth Limitations. Subject to applicable law relating to the vesting provisions of development agreements, Landowner and City intend that, except as otherwise provided in this Agreement, this Agreement shall vest the Project Approvals against subsequent City resolutions, ordinances and initiatives that directly or indirectly limit the rate, timing, sequencing of development, or prevent or conflict with the permitted uses, density and intensity of uses as set forth in the Project Approvals. Landowner shall, to the extent allowed by the laws pertaining to development agreements, be subject to any growth limitation ordinance, resolution, rule, regulation or policy which is adopted on a uniformly applied, City-wide or area-wide basis, and directly concerns a public "safety, health or welfare" (as that phrase is used in California Government Code Section 65858) issue, in which case City shall treat Landowner in a uniform, equitable and proportionate manner with all properties, public and private, which are impacted by that public, safety, health or welfare issue.

6.4. Additional Conditions.

6.4.1. New Park Development Obligation. The Parties acknowledge that the City, on February 22, 2005, adopted Resolution No. 28-2005, which establishes revised standards for Park and Open Space in the City. The Parties further acknowledge that the City, on March 7, 2005, adopted Ordinance 36-2005, establishing the City's intent to modify its park improvement impact fee. In recognition of unique characteristics of Landowner's Project (e.g., design features of the Project and other contributions made by Landowner pursuant to this DA), and the timing of City's processing of the Project, the Parties hereby agree that the provisions of

this subsection 6.4.1 shall control Landowner's obligations with respect to Landowner's new park development obligation. To fulfill its parkland dedication obligation, Landowner shall:

(i) Provide to the City improved park land and park land in-lieu payment to satisfy a total park land obligation of 14.638 acres (calculated as 6.0 acres of park land per 1,000 residents);

(ii) Provide a combination of park improvements and park impact fees equal in value to \$5,937,033 (calculated as \$7,179 per dwelling unit). Parks constructed within the Project shall be generally consistent with facilities identified in the Capital Village SPA. Prior to recordation of any final map for the Property, Landowner shall enter into a Parks Development Agreement ("Parks DA") with the Cordova Recreation and Park District (the "Park District"), to which the City shall be named as third party beneficiary, that specifies how the parks on the Property shall be designed and improved. Landowner shall pay the costs of preparing the Parks DA. Landowner shall receive credit, as determined appropriate by the Park District, against park impact fees, for park improvements constructed upon the Property.

6.4.2. Timing of Dedications and Improvements of Parks. Prior to recordation of any final map for the Property, Landowner shall fulfill the obligations described in subsection 6.4.1. Landowner agrees to commence construction of the improvements described in subsection 6.4.1 prior to the issuance of the first building permit for the Project and to complete construction of all the improvements described in subsection 6.4.1 prior to issuance of the 450th building permit. Landowner shall pay to the City any in-lieu fee required under subsection 6.4.1 no later than prior to issuance of the building permit for each residential parcel for the Property. After fulfilling the requirements described in subsections 6.4.1 and 6.4.2, and the Parks DA, Landowner will be deemed to have satisfied in full its new park development obligation.

6.4.3. Existing Park Renovation Fees. The Landowner agrees that it shall pay the City the total sum of seven hundred forty two dollars (\$742.00) for each residential parcel shown on the final maps for the Property. Beginning on January 1, 2006, the fee shall be adjusted annually on each January 1 based upon the percentage change in the United States Department of Labor Consumer Price Index for all Urban Consumers for the San Francisco-Oakland-San Jose area between April and April of each year. This fee shall be paid to the City no later than prior to issuance of the building permit for each residential parcel for the Property. It shall be used by the City, at its sole discretion to renovate, repair, improve or maintain existing parks in the City. This payment is made voluntarily by the Landowner. It is in addition to all other existing park fees, and construction and dedication obligations, including without limitation any fees paid pursuant to California Government Code Section 66477 (the "Quimby Act"). Notwithstanding the previous sentence, the Parties agree that subsequent requirements that result from the City's current effort to modify its park improvement impact fee, consistent with, and as reflected in, Resolution 36-2005, adopted by the City on March 7, 2005, shall not apply to the Property. Landowner agrees that it shall not claim any credit or right to reimbursement of any other existing park fees, and construction and dedication obligations, including Quimby Act fees, as a result of paying the existing park renovation fees required under this Section.

6.4.4. Police Tax. Landowner agrees to vote in favor of and to cooperate in the creation of a special tax zone area within the Rancho Cordova Special Police Tax Area. The boundaries of the special tax zone area shall be contiguous with the boundaries

of the Property. The Landowner shall vote in favor of and cooperate in the levy of a special tax for police services on each residential parcel or residential parcel equivalent on the Property. The special tax shall be in the amount of \$251 annually per single-family residential parcel or residential parcel equivalent, and \$0.15 for each square foot of gross parcel area of non-residential use (excluding recreational and agricultural uses). Multi-family residential units on a single parcel shall be assessed on a proportionately equivalent basis (e.g., a two-unit attached housing structure, such as a duplex, would be deemed to consist of two residential parcels for purposes of the police tax). The amount of the special tax shall be adjusted annually based upon the percentage change in the United States Department of Labor Consumer Price Index for all Urban Consumers for the San Francisco-Oakland-San Jose area between April and April of each year. If the Consumer Price Index is discontinued, or revised, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Consumer Price Index had not been discontinued or revised. The special tax shall be payable annually following issuance of a building permit for each subject parcel. The Landowner shall pay all the costs of conducting the election and all costs related to the implementation of this subsection for the Project. City agrees that compliance with the terms of this subsection will satisfy the Landowner's obligation under Condition of Approval Number 50 to pay a special tax for police services in the amount of \$251 per year per residential parcel.

6.4.5. Traffic Impact Fee. The Parties acknowledge that the City is currently in the process of studying and adopting a permanent traffic impact mitigation fee, which will go into effect after the City completes a traffic analysis and nexus study consistent with Government Code Section 66000, et seq. In recognition of unique characteristics of Landowner's Project (e.g., design features of the Project and other contributions made by Landowner pursuant to this DA), and the timing of City's processing of the Project, the Parties hereby agree that the provisions of this subsection shall control Landowner's obligations with respect to Landowner's traffic impact fee. To fulfill its traffic impact fee obligation, Landowner shall pay impact fees in the amount of \$6,946,800 (calculated as \$8,400 per dwelling unit). Landowner shall pay to the City the traffic mitigation fee of \$8,400 per dwelling unit prior to issuance of building permit for each residential parcel. All of the traffic impact fees collected pursuant to this subsection (i.e., the entire \$6,946,800), shall be placed in a separate City fund, the Capital Village Road Improvement Fund ("CVRIF").

In addition to the fees collected for dwelling units, there will be an additional traffic impact fee for non-Residential uses on the Property that will be either the amount in effect at the time of issuance of a building permit of each non-Residential building permit on the Property, or the amount in reflected in a subsequent amendment to this Agreement.

6.4.6. Improvements Required; Reimbursement. In addition to payment of other fees and taxes, including without limitation the traffic impact fee described in Section 6.4.5, Landowner shall be required to design, obtain necessary approvals for, construct, and dedicate to the City the following improvements, in addition to any and all other improvements required by the Project Approvals (collectively with the improvements in this subsection, the "Improvements"):

i. Signalization of International and Prospect. Landowner shall design, obtain necessary approvals for, construct, install, and dedicate to the City a traffic signal and related improvements at the intersection of International Drive and Prospect Park Drive, to the satisfaction of the City Public Works Department and consistent with the

Project Approvals. Funds previously collected for this improvement shall be provided to the Landowner as reimbursement once the improvement is complete. Landowner may be reimbursed from the CVRIF and from the funds previously collected for this specific improvement (i.e., approximately \$200,000) for the cost of improvements designed, constructed, installed, and dedicated as provided in this subsection 6.4.6(i), provided, however, that in no event shall any moneys be paid by the City, from funds other than the CVRIF and the \$200,000 in funds already collected, to reimburse the Landowner for the road improvements designed, constructed, installed, or dedicated as provided in this subsection. Any reimbursement for designing, constructing, installing, and dedicating the road improvements subject to this subsection (i) shall be limited to the amount of money available in the CVRIF plus \$200,000. Therefore, if the total costs of designing, constructing, installing, or dedicating the road improvements in this subsection (i) exceed the total sum of money paid by the Landowner into the CVRIF, plus \$200,000, the City shall have no further reimbursement obligation for such road improvements.

ii. **Zinfandel and Data.** Landowner shall design, obtain necessary approvals for, construct, install, and dedicate to the City a traffic signal and related improvements at the intersection of Zinfandel Drive and Data Drive, to the satisfaction of the City Public Works Department and consistent with the Project Approvals. The improvement shall include: modified east and west approaches to provide a dedicated left-turn lane and shared through/right-turn lane. The traffic signal timing shall be modified to operate the east and west approaches with "split" phasing. The parties acknowledge that, as of the Effective Date, the Landowner's eligibility for reimbursement for this improvement has not yet been determined. Landowner may be reimbursed from the CVRIF for the cost of improvements designed, constructed, installed, and dedicated as provided in this subsection 6.4.6(ii), provided, however, that in no event shall any moneys be paid by the City, from funds other than the CVRIF, to reimburse the Landowner for the road improvements designed, constructed, installed, and dedicated as provided in this subsection. Any reimbursement for designing, constructing, installing, or dedicating the road improvements subject to this subsection (ii) shall be limited to the amount of money available in the CVRIF. The City shall have no reimbursement obligation beyond the CVRIF. Therefore, if the total costs of designing, constructing, installing, or dedicating the road improvements in this subsection (ii) exceed the total sum of money paid by the Landowner into the CVRIF, the City shall have no further reimbursement obligation for such road improvements.

iii. **Data and Disk.** Landowner shall design, obtain necessary approvals for, construct, install, and dedicate to the City a traffic signal and related improvements at the intersection of Data Drive and Disk Drive, to the satisfaction of the City Public Works

Department and consistent with the Project Approvals. The improvement shall include, at a minimum, the following improvements to the intersection:

1. One through lane and one right-turn lane on northbound Data Drive.
2. One left-turn lane and one through lane on southbound Data Drive.
3. One left-turn lane and one right-turn lane on westbound Disk Drive.

4. Interconnect and coordinate signal with the adjacent signals of Zinfandel Drive / Data Drive and Prospect Park Drive (West) / Data Drive / White Rock Road.

Landowner is not eligible to be reimbursed from the CVRIF or other City moneys for the cost of improvements designed, constructed, installed, and dedicated as provided in this subsection 6.4.6(iii).

iv. **Zinfandel and "Main Street"**. Landowner shall design, obtain necessary approvals for, construct, install, and dedicate to the City a traffic signal and related improvements at the intersection of Zinfandel Drive and the street referred to as "Main Street" in the approval documents, to the satisfaction of Public Works and consistent with the Project Approvals. Landowner is not eligible to be reimbursed from the CVRIF or other City moneys for the cost of improvements designed, constructed, installed, and dedicated as provided in this subsection 6.4.6(iv).

v. **International and "B" Street**. Landowner shall design, obtain necessary approvals for, construct, install, and dedicate to the City a traffic signal and related improvements at the intersection of International Drive and the street referred to as "B" Street in the approval documents, to the satisfaction of Public Works and consistent with the Project Approvals. Landowner is not eligible to be reimbursed from the CVRIF or other City moneys for the cost of improvements designed, constructed, installed, and dedicated as provided in this subsection 6.4.6(v).

6.4.7. Right-of-Way Acquisition. For any of the above improvements requiring additional right-of-way, City will assist with the acquisition of right-of-way, if required, and the Landowner shall pay for acquisition, including without limitation administrative and technical assistance costs.

6.4.8. Timing of Improvements. Except where otherwise provided in subsection 6.4.2, Landowner shall be required to complete the process of designing, obtaining necessary approvals for, and initiating construction of, improvements listed in subsection 6.4.6 prior to the 501st home occupancy (final inspection) for the Project. An improvement will be deemed "initiated" after the award of any and all construction contracts, and upon the commencement of actual physical construction.

6.4.9. Waiver Related to Conveyances. In consideration of the benefits received pursuant to this Agreement, Landowner waives any and all causes of action that it might have under the ordinances of the City, or the laws of the State of California or the United States, with regard to any otherwise uncompensated or under-compensated conveyance or dedication of land or easements or construction of improvements specified in this Agreement.

7. Applicable Rules, Regulations and Official Policies

7.1. Rules Regarding Permitted Uses. Except as otherwise provided by subsection 6.4.1 pertaining to new park development, for the term of this Agreement, the City's ordinances, resolutions, rules, regulations and official policies governing the permitted uses of the Property, the density and intensity of use, the rate timing and sequencing of development, the maximum height and size of proposed buildings, and provisions for reservation and dedication of land shall be those in force and effect on the Effective Date of this Agreement.

7.2. Rules Regarding Design and Construction. All development within the project shall be subject to the applicable provisions of the City's Design Review regulations (Ordinance 14-2003), the provisions of the Capital Village SPA, and any applicable provisions, as determined appropriate by the City, of the subsequently adopted City of Rancho Cordova Design Guidelines. Unless otherwise expressly provided in this Agreement, all the other ordinances, resolutions, rules, regulations and official policies governing design, improvement and construction standards and specifications applicable to the Project shall be those in force and effect at the time the applicable permit approval is granted. Ordinances, resolutions, rules, regulations and official policies governing design, improvement and construction standards and specifications applicable to public improvements to be constructed by Landowner shall be those in force and effect at the time the applicable permit approval is granted.

7.3. Changes in State or Federal Law. This Agreement shall not preclude the application to development of the Property of changes in City laws, regulations, plans or policies, the terms of which are specifically mandated and required by changes in State or Federal laws or regulations.

7.4. Uniform Codes Applicable. Unless otherwise expressly provided in this Agreement, the Project shall be constructed in accordance with the provisions of the Uniform Building, Mechanical, Plumbing, Electrical and Fire Codes, City standard construction specifications, and Title 24 of the California Code of Regulations, relating to Building Standards, in effect at the time of approval of the appropriate building, grading, encroachment or other construction permits for the Project. If no permits are required for infrastructure improvements, such improvements will be constructed in accordance with the provisions of the Uniform Building, Mechanical, Plumbing, Electrical and Fire Codes, City standard construction specifications, and Title 24 of the California Code of Regulations, relating to Building Standards, in effect at the start of construction of such infrastructure.

8. Subsequently Enacted Fees, Dedications, Assessments and Taxes.

8.1. Processing Fees and Charges. Landowner shall pay those processing, inspection and plan checking fees and charges required by City under then current regulations for processing applications and requests for permits, approvals and other actions, and monitoring compliance with any permits issued or approvals granted or the performance of any conditions with respect thereto or any performance required of Landowner hereunder.

8.2. Development Impact Fees, Exactions and Dedications. Except as otherwise provided herein including Sections 6.3 and 6.4, any and all development impact fees, dedications of land, connection or mitigation fees, and exactions required by City to be paid by Landowner to support the construction of any public facilities and improvements or the provision of public services in relation to development of the Property (together "Exactions") shall be the Exactions authorized as of the Effective Date; provided, however, Landowner shall pay any Exactions authorized by City after the Effective Date provided that said Exactions otherwise comply with applicable law, and are either (i) required on a City-wide basis, or (ii) apply uniformly to all properties within the City that are zoned consistent with the Project Approvals, or (iii) apply uniformly to all properties that are similarly situated, whether by geographic location, drainage sheds or other distinguishing circumstances. Wherever this Agreement obligates Landowner to design, construct or install any improvements, the cost thereof may be provided

by Landowner or by a Community Facilities District or other such financing mechanism, subject to and in accordance with the provisions thereof.

8.3. CEQA Mitigation Measures. Notwithstanding any other provision in this Agreement to the contrary, as and when Landowner elects to develop the Property, Landowner shall be bound by, and shall perform, all mitigation measures contained in the MND and Conditions of Approval/MMRP related to such development, which are adopted by the City, and are identified in the mitigation monitoring plan, the MND or Conditions of Approval/MMRP as being a responsibility of Landowner.

9. Community Facilities District.

9.1. Community Facilities District Formation - Financing. City acknowledges that Landowner may cause to be formed a Community Facilities District ("CFD") pursuant to the provisions of Section 53311 et seq. of the Government Code for the purpose of financing the acquisition or construction of a portion of the Improvements described in subsection 6.4.6. The provisions of Sections 9.2-9.5 shall apply to any such CFD formed, as well as to the CFD formed for maintenance, as described in Section 9.6.

9.2. Issuance of Bonds. City and Landowner agree that, with the consent of Landowner, and to the extent permitted by law, City and Landowner shall use their best efforts to cause bonds to be issued in amounts sufficient to achieve the purposes of this Section. As of the Effective Date, one series of such bonds has been issued. At least one additional series of bonds is expected to be issued.

9.3. Payment Prior to Issuance of Bonds. Nothing in this Agreement shall be construed to preclude the payment by an owner of any of the parcels to be included within the CFD of a cash amount equivalent to its proportionate share of costs for the Improvements, or any portion thereof, prior to the issuance of bonds.

9.4. Private Financing. Nothing in this Agreement shall be construed to limit Landowners option to install the Improvements through the use of private financing.

9.5. Acquisition and Payment. City agrees that it shall use its best efforts to allow and facilitate monthly acquisition of completed Improvements or completed portions thereof, and monthly payment of appropriate amounts for such Improvements to the person or entity constructing Improvements or portions thereof, provided City shall only be obligated to use CFD bond or tax proceeds for such acquisitions.

9.6. Service District for Maintenance.

9.6.1. Formation, Consent, Waiver and Special Benefit. Landowner must form and/or cooperate in annexation to, one or more Community Facilities Services District or other such financing mechanism or assessment district for maintenance purposes, as chosen by the City (herein the "Services District"), and consents herewith to the levy of such special taxes as are necessary to fund the maintenance obligations described below. No residential building permit, excluding permits for model homes, shall be issued until the formation of, and inclusion of the Property in, the Services District. For purposes of Article XIID of the California Constitution, Landowner acknowledges hereby that all the services described herein to be provided by the Services District will provide a "special benefit" to the Property, as defined by

said Article, and that the foregoing support and consent shall apply as to any claim that any portion of the services supported by the special tax does not provide special benefit to the Property. The Services District shall:

i. Provide the City assured funding for the ongoing maintenance and operation of public facilities and all Improvements required herein or in the Project Approvals, whether such facilities and Improvements are located within or outside of the boundaries of the Project, including: public roads, public alleys and associated frontage improvements such as curb, gutter and sidewalks, intersection signals, and street signs; road special features (e.g. speed bumps, textured or painted surfaces, modified crosswalks, etc.); project monument signs; all public landscaping, including street frontage landscaping and road medians; streetlights within the Property and upon the Property frontages along Prospect Park Drive, International Drive, and Zinfandel Drive; and statuary, fountains or ornamental structures.

ii. Cause to be established appropriate funding mechanisms, to the satisfaction of the Park District, to fund the ongoing maintenance of park facilities and improvements, including Park A, Park B, and Park C within the Project, and any other park improvements pursuant to the Project Approvals.

iii. Cause to be established appropriate funding mechanisms, as determined appropriate by the City, in consultation with the Sacramento County Department of Water Resources, to fund the ongoing maintenance of drainage facilities within the Project consistent with the Project Approvals.

iv. Cause to be established appropriate funding mechanisms, as determined appropriate by the City, to maintain all public open space areas within the Property, other than improved park sites, including without limitation, maintaining bike trails and conducting weed abatement and providing fire prevention to the satisfaction of the Sacramento Metropolitan Fire District within such open space areas. Such fire prevention efforts may include flail mowing from adjacent private property lines into such open space areas and other such vegetation management efforts as deemed necessary by the Fire District.

v. Conduct, manage and finance any environmental mitigation monitoring required by the Project Approvals.

Landowner acknowledges that the total annual cost of the maintenance obligations in this Section 9.6 is not known as of the Effective Date, and will be determined in the future. The assessments listed herein shall be adjusted annually on each January 1, beginning on January 1, 2006, based upon the Consumer Price Index, consistent with subsections 6.4.3 and 6.4.4 of this Agreement.

9.6.2. Public Parcel Exclusion. Landowner expressly agrees that Parcels conveyed or to be conveyed to the City or Park District shall be excluded from any assessment to be imposed by the Services District.

10. Amendment or Cancellation.

10.1. Modification Because of Conflict with State or Federal Laws. In the event that state or federal laws or regulations enacted after the Effective Date of this Agreement prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps or permits approved by the City, the parties shall meet and confer in good faith in a reasonable attempt to modify this Agreement to comply with such federal or state law or regulation. Any such amendment or suspension of the Agreement shall be approved by the City Council in accordance with the Municipal Code and this Agreement.

10.2. Amendment by Mutual Consent. This Agreement may be amended in writing from time to time by mutual consent of the parties hereto and in accordance with the procedures of State law and the Municipal Code.

10.3. Insubstantial Amendments. Notwithstanding the provisions of the preceding Section 10.2, any amendments to this Agreement which do not relate to (a) the term of the Agreement as provided in Section 5.2; (b) the permitted uses of the Property as provided in Section 6.2; (c) provisions for "significant" reservation or dedication of land; (d) the location and maintenance of on-site and off-site improvements; (e) the density or intensity of use of the Project; (f) the maximum height or size of proposed buildings; or (g) monetary contributions by Landowner as provided in this Agreement shall not, except to the extent otherwise required by law, require notice or public hearing before either the Planning Commission or the City Council before the parties may execute an amendment hereto. City's City Manager shall determine whether a reservation or dedication is "significant".

10.4. Amendment of Project Approvals. Any amendment of Project Approvals relating to: (a) the permitted use of the Property; (b) provision for reservation or dedication of land; (c) the density or intensity of use of the Project; (d) the maximum height or size of proposed buildings; (e) monetary contributions by the Landowner; (f) the location and maintenance of on-site and off-site improvements, or (g) any other issue or subject not identified as an "insubstantial amendment" in Section 10.3 of this Agreement, shall require an amendment of this Agreement. Such amendment shall be limited to those provisions of this Agreement, which are implicated by the amendment of the Project Approval. Any other amendment of the Project Approval(s) shall not require amendment of this Agreement unless the amendment of the Project Approval(s) relates specifically to some provision of this Agreement.

10.5. Cancellation by Mutual Consent. Except as otherwise permitted herein, this Agreement may be canceled in whole or in part only by the mutual consent of the parties or their successors in interest, in accordance with the provisions of the Municipal Code. Any fees paid pursuant to this Agreement prior to the date of cancellation shall be retained by City.

11. Term of Project Approvals. Pursuant to California Government Code Section 66452.6(a), the term of any parcel map or tentative subdivision map shall automatically be extended for the term of this Agreement.

12. Annual Review.

12.1. Review Date. The annual review date for this Agreement shall be approximately 12 months from the date the Agreement is entered into.

12.2. Initiation of Review. The City's Planning Director shall initiate the annual review by giving to Landowner written notice that the City intends to undertake such review. Within 30 days of City's notice, Landowner shall provide evidence to the Planning Director to demonstrate good faith compliance with the Development Agreement. The burden of proof, by substantial evidence of compliance, is upon the Landowner. The City's failure to timely initiate the annual review is not deemed to be a waiver of the right to do so at a later date; accordingly, Landowner is not deemed to be in compliance with the Agreement by virtue of such failure to timely initiate review.

12.3. Staff Reports. City shall deposit in the mail to Landowner a copy of all staff reports, and related exhibits, concerning contract performance at least three (3) days prior to any annual review.

12.4. Costs. Costs reasonably incurred by the City in connection with the annual review shall be paid by Landowner in accordance with the City's schedule of fees and billing rates in effect at the time of review.

12.5. Non-compliance with Agreement; Hearing. If the Planning Director determines, on the basis of substantial evidence, that Landowner has not complied in good faith with the terms and conditions of the Agreement during the period under review, the City Council, upon receipt of any report or recommendation from the Planning Commission, may initiate proceedings to modify or terminate the Agreement, at which time an administrative hearing shall be conducted, in accordance with the procedures of State law and Municipal Code section 110-05. As part of that final determination, the City Council may impose conditions that it considers necessary and appropriate to protect the interest of the City.

12.6. Appeal of Determination. The decision of the City Council as to Landowner's compliance shall be final, and any court action or proceeding to attack, review, set aside, void or annul any decision of the determination by the Council shall be commenced within thirty (30) days, as set forth in the Municipal Code (section 115-39).

13. Default. Subject to any applicable extension of time, failure by any party to perform any term or provision of this Agreement required to be performed by such party shall constitute an event of default ("Event of Default"). For purposes of this Agreement, a party claiming another party is in default shall be referred to as the "Complaining Party," and the party alleged to be in default shall be referred to as the "Party in Default." A Complaining Party shall not exercise any of its remedies as the result of such Event of Default unless such Complaining Party first gives notice to the Party in Default as provided in subsection 13.1.1, and the Party in Default fails to cure such Event of Default within the applicable cure period.

13.1. Procedure Regarding Defaults.

13.1.1. Notice. The Complaining Party shall give written notice of default to the Party in Default, specifying the default complained of by the Complaining Party. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.

13.1.2. Cure. The Party in Default shall diligently endeavor to cure, correct or remedy the matter complained of, provided such cure, correction or remedy shall be

completed within the applicable time period set forth herein after receipt of written notice (or such additional time as may be deemed by the Complaining Party to be reasonably necessary to correct the matter).

13.1.3. Failure to Assert. Any failures or delays by a Complaining Party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by a Complaining Party in asserting any of its rights and remedies shall not deprive the Complaining Party of its right to institute and maintain any actions or proceedings, which it may deem necessary to protect, assert, or enforce any such rights or remedies.

13.1.4. Notice of Default. If an Event of Default occurs prior to exercising any remedies, the Complaining Party shall give the Party in Default written notice of such default. If the default is reasonably capable of being cured within thirty (30) days, the Party in Default shall have such period to effect a cure prior to exercise of remedies by the Complaining Party. If the nature of the alleged default is such that it cannot, practicably be cured within such 30 day period, the cure shall be deemed to have occurred within such 30 day period if: (a) the cure shall be commenced at the earliest practicable date following receipt of the notice; (b) the cure is diligently prosecuted to completion at all times thereafter; (c) at the earliest practicable date (in no event later than thirty (30) days after the curing party's receipt of the notice), the curing party provides written notice to the other party that the cure cannot practicably be completed within such 30 day period; and (d) the cure is completed at the earliest practicable date. In no event shall Complaining Party be precluded from exercising remedies if a default is not cured within one hundred twenty (120) days after the first notice of default is given.

13.1.5. Legal Proceedings. Subject to the foregoing, if the Party in Default fails to cure a default in accordance with the foregoing, the Complaining Party, at its option, may institute legal proceedings pursuant to this Agreement or, in the event of a material default, terminate this Agreement. Upon the occurrence of an Event of Default, the parties may pursue all other remedies at law or in equity, which are not otherwise provided for or prohibited by this Agreement, or in the City's regulations governing development agreements, expressly including the remedy of specific performance of this Agreement.

13.1.6. Effect of Termination. If this Agreement is terminated following any Event of Default of Landowner or for any other reason, such termination shall not affect the validity of any building or improvement within the Property which is completed as of the date of termination, provided that such building or improvement has been constructed pursuant to a building permit issued by the City. Furthermore, no termination of this Agreement shall prevent Landowner from completing and occupying any building or other improvement authorized pursuant to a valid building permit previously issued by the City that is under construction at the time of termination, provided that any such building or improvement is completed in accordance with said building permit in effect at the time of such termination.

14. Estoppel Certificate. Either Party may, at any time, and from time to time, request written notice from the other Party requesting such Party to certify in writing that, (a) this Agreement is in full force and effect and a binding obligation of the Parties, (b) this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments, and (c) to the knowledge of the certifying Party the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults. A Party receiving a request hereunder shall

execute and return such certificate within thirty (30) days following the receipt thereof, or such longer period as may reasonably be agreed to by the Parties. City Manager of City shall be authorized to execute any certificate requested by Landowner. Should the party receiving the request not execute and return such certificate within the applicable period, this shall not be deemed to be a default.

15. Mortgagee Protection; Certain Rights of Cure.

15.1. Mortgagee Protection. This Agreement shall be superior and senior to any lien placed upon the Property, or any portion thereof after the date of recording this Agreement, including the lien for any deed of trust or mortgage ("Mortgage"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all the terms and conditions contained in this Agreement shall be binding upon and effective against any person or entity, including any deed of trust beneficiary or mortgagee ("Mortgagee") who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

15.2. Mortgagee Not Obligated. Notwithstanding the provisions of Section 15.1 above, no Mortgagee shall have any obligation or duty under this Agreement, before or after foreclosure or a deed in lieu of foreclosure, to construct or complete the construction of improvements, or to guarantee such construction of improvements, or to guarantee such construction or completion, or to pay, perform or provide any fee, dedication, improvements or other exaction or imposition; provided, however, that a Mortgagee shall not be entitled to devote the Property to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by the Project Approvals or by this Agreement.

15.3. Notice of Default to Mortgagee and Extension of Right to Cure. If City receives notice from a Mortgagee requesting a copy of any notice of default given Landowner hereunder and specifying the address for service thereof, then City shall deliver to such Mortgagee, concurrently with service thereon to Landowner, any notice given to Landowner with respect to any claim by City that Landowner has committed an Event of Default. Each Mortgagee shall have the right during the same period available to Landowner to cure or remedy, or to commence to cure or remedy, the Event of Default claimed set forth in the City's notice. City, through its City Manager, may extend the cure period provided in Section 13.1 for not more than an additional sixty (60) days upon request of Landowner or a Mortgagee.

16. Severability. Except as set forth herein, if any term, covenant or condition of this Agreement or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons, entities or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law; provided, however, if any provision of this Agreement is determined to be invalid or unenforceable and the effect thereof is to deprive a Party hereto of an essential benefit of its bargain hereunder, then such Party so deprived shall have the option to terminate this entire Agreement from and after such determination.

17. Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

18. Attorneys' Fees and Costs in Legal Actions By Parties to the Agreement.

Should any legal action be brought by either party for breach of this Agreement or to enforce any provisions herein, the prevailing party to such action shall be entitled to reasonable attorneys' fees; court costs and such other costs as may be fixed by the Court.

19. Attorneys' Fees and Costs in Legal Actions By Third Parties to the Agreement. If any person or entity not a party to this Agreement initiates an action at law or in equity to challenge the validity of any provision of this Agreement or the Project Approvals, the parties shall cooperate and appear in defending such action. Landowner shall bear its own costs of defense as a real party in interest in any such action, and Landowner shall reimburse City on an equal basis for all reasonable court costs and attorneys' fees expended by City in defense of any such action or other proceeding.

20. Transfers and Assignments. From and after recordation of this Agreement against the Property, Landowner shall have the full right to assign this Agreement as to the Property, or any portion thereof, in connection with any sale, transfer or conveyance thereof, and upon the express written assignment by Landowner and assumption by the assignee of such assignment in the form attached hereto as Exhibit 5 and the conveyance of Landowner's interest in the Property related thereto, Landowner shall be released from any further liability or obligation hereunder related to the portion of the Property so conveyed and the assignee shall be deemed to be the "Landowner," with all rights and obligations related thereto, with respect to such conveyed property. Prior to recordation of this Agreement, any proposed assignment of this Agreement by Landowner shall be subject to the prior written consent of the City Manager on behalf of the City and the form of such assignment shall be subject to the approval of the City Attorney, neither of which shall be unreasonably withheld.

21. Agreement Runs with the Land. Except as otherwise provided for in Section 15 of this Agreement, all of the provisions, rights, terms, covenants, and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors and assignees, representatives, lessees, and all other persons acquiring the Property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions of this Agreement shall be enforceable as equitable servitude and shall constitute covenants running with the land pursuant to applicable laws, including, but not limited to, Section 1468 of the Civil Code of the State of California. Each covenant to do, or refrain from doing, some act on the Property hereunder, or with respect to any owned property, (a) is for the benefit of such properties and is a burden upon such properties, (b) runs with such properties, and (c) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and shall be a benefit to and a burden upon each party and its property hereunder and each other person succeeding to an interest in such properties.

22. Bankruptcy. The obligations of this Agreement shall not be dischargeable in bankruptcy.

23. Indemnification. Landowner agrees to indemnify, defend and hold harmless City, and its elected and appointed councils, boards, commissions, officers, agents, employees, and representatives from any and all claims, costs (including legal fees and costs) and liability for any personal injury or property damage which may arise directly or indirectly as a result of any actions or inactions by the Landowner, or any actions or inactions of Landowner's contractors, subcontractors, agents, or employees in connection with the construction, improvement, operation, or maintenance of the Property and the Project, provided that

Landowner shall have no indemnification obligation with respect to the gross negligence or willful misconduct of City, its contractors, subcontractors, agents or employees or with respect to the maintenance, use or condition of any improvement after the time it has been dedicated to and accepted by the City or another public entity (except as provided in an improvement agreement or maintenance bond).

24. Insurance.

24.1. Public Liability and Property Damage Insurance. At all times that Landowner is constructing any improvements that will become public improvements, Landowner shall maintain in effect a policy of comprehensive general liability insurance with a per-occurrence combined single limit of not less than one million dollars (\$1,000,000) and a deductible of not more than ten thousand dollars (\$10,000.00) per claim. The policy so maintained by Landowner shall name the City as an additional insured and shall include either a severability of interest clause or cross-liability endorsement.

24.2. Workers' Compensation Insurance. At all times that Landowner is constructing any improvements that will become public improvements, Landowner shall maintain Workers' Compensation insurance for all persons employed by Landowner for work at the Project site. Landowner shall require each contractor and subcontractor similarly to provide Workers' Compensation insurance for its respective employees. Landowner agrees to indemnify the City for any damage resulting from Landowner's failure to maintain any such insurance.

24.3. Evidence of Insurance. Prior to commencement of construction of any improvements which will become public improvements, Landowner shall furnish City satisfactory evidence of the insurance required in Sections 24.1 and 24.2 and evidence that the carrier is required to give the City at least fifteen days prior written notice of the cancellation or reduction in coverage of a policy. The insurance shall extend to the City, its elective and appointive boards, commissions, officers, agents, employees and representatives and to Landowner performing work on the Project.

25. Excuse for Nonperformance. Landowner and City shall be excused from performing any obligation or undertaking provided in this Agreement, except any obligation to pay any sum of money under the applicable provisions hereof, in the event and so long as the performance of any such obligation is prevented or delayed, retarded or hindered by act of God, fire, earthquake, flood, explosion, action of the elements, war, invasion, insurrection, riot, mob violence, sabotage, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, action of labor unions, condemnation, requisition, laws, orders of governmental, civil, military or naval authority, or any other cause, whether similar or dissimilar to the foregoing, not within the control of the Party claiming the extension of time to perform. The Party claiming such extension shall send written notice of the claimed extension to the other Party within thirty (30) days from the commencement of the cause entitling the Party to the extension.

26. Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the Landowner and, the City and their successors and assigns. No other person shall have any right of action based upon any provision in this Agreement.

27. Notices. All notices required by this Agreement, the enabling legislation, or the procedure adopted pursuant to Government Code Section 65865, shall be in writing and delivered in person or sent by certified mail, postage prepaid.

Notice required to be given to the City shall be addressed as follows:

Planning Director
City of Rancho Cordova
3121 Gold Canal Drive
Rancho Cordova, CA 95670

Notice required to be given to the Landowner shall be addressed as follows:

Hearthstone Multi-Asset Entity B, L. P.
781 Lincoln Avenue
San Rafael, CA 94901
Attention: Tracy Carver

and:

Beazer Homes Holdings Corp.
3721 Douglas Boulevard, Suite 100
Roseville, California 95661
Attention: Stan Samiec

Either party may change the address stated herein by giving notice in writing to the other party, and thereafter notices shall be addressed and transmitted to the new address.

28. Form of Agreement; Recordation; Exhibits. Except when this Agreement is automatically terminated due to the expiration of the Term of the Agreement or the provisions of Section 5.3 (Automatic Termination Upon Completion and Sale of Residential Lot), the City shall cause this Agreement, any amendment hereto and any other termination of any parts or provisions hereof, to be recorded, at Landowner's expense, with the county Recorder within ten (10) days of the effective date thereof. Any amendment or termination of this Agreement to be recorded that affects less than all of the Property shall describe the portion thereof that is the subject of such amendment or termination. This Agreement is executed in three duplicate originals, each of which is deemed to be an original. This Agreement consists of nineteen (19) pages and five (5) exhibits, which constitute the entire understanding and agreement of the parties.

29. Further Assurances. The Parties agree to execute such additional instruments and to undertake such actions as may be necessary to effectuate the intent of this Agreement.

30. City Cooperation. The City agrees to cooperate with Landowner in securing all permits which may be required by City. In the event state or federal laws or regulations enacted after the Effective Date, or action of any governmental jurisdiction, prevent delay or preclude compliance with one or more provisions of this Agreement, or require changes in plans, maps or permits approved by City, the parties agree that the provisions of this Agreement shall be modified, extended, or suspended as may be necessary to comply with such state and federal laws or regulations or the regulations of other governmental jurisdictions. Each party agrees to

extend to the other its prompt and reasonable cooperation in so modifying this Agreement or approved plans.

IN WITNESS WHEREOF, the City of Rancho Cordova, a municipal corporation, has authorized the execution of this Agreement in duplicate by its City Manager and attested to by its City Clerk under the authority of Ordinance No. 07-2005, adopted by the Council of the City on the twenty-first day of March, 2005, and Landowner has caused this Agreement to be executed.

"CITY"

"LANDOWNER"

CITY OF RANCHO CORDOVA,
a municipal corporation

BEAZER HOMES HOLDINGS CORP.,
a Delaware corporation

By: Ted A. Gaebler

By: James G. Van Meter, Jr.

Name: TED A. GAEBLER

Name: JAMES G. VAN METER, JR.

Its: CITY MANAGER

Its: VICE PRESIDENT OF LAND ACQ.

ATTEST:

HEARTHSTONE MULTI-ASSET ENTITY B,
L.P., a California limited partnership

Lillian E. Han
City Clerk

By: HHP GP, LLC, a California limited liability company, its General Partner

By: HEARTHSTONE INC., a California corporation, its Manager

By: Tracy Carver
Tracy Carver, Executive Vice President-General Counsel

APPROVED AS TO FORM:
Adam U. Lindgren
Adam U. Lindgren
Assistant City Attorney

775006_1




Public Agency Form of Acknowledgement

STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

On January 20, 2006, before me, Anna Olea-Moger, Assistant City Clerk for the City of Rancho Cordova, personally appeared Ted A. Gaebler, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity of City Manager of the City of Rancho Cordova, and that by his signature on the instrument the person, or the entity upon behalf of which he acted, executed the instrument.

Witness my hand and official seal.


Anna Olea-Moger, Assistant City Clerk

**Description of Attached Document: Development Agreement by and between
The City of Rancho Cordova and Beazer Home Holdings Corp and
Hearthstone Multi-Asset Entity B, L.P. - Relative to Capital Village**

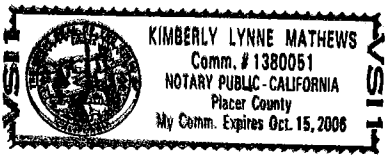
ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Placer } SS.

On October 24 2005 before me, Kimberly Lynne Mathews,
(DATE) (NOTARY)
personally appeared James G Van Maren, Jr.
SIGNER(S)

personally known to me - OR- proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Kimberly Lynne Mathews
NOTARY'S SIGNATURE

OPTIONAL INFORMATION

The information below is not required by law. However, it could prevent fraudulent attachment of this acknowledgment to an unauthorized document.

CAPACITY CLAIMED BY SIGNER (PRINCIPAL)

- INDIVIDUAL
- CORPORATE OFFICER
- _____ TITLE(S)
- PARTNER(S)
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: _____
- _____
- _____

DESCRIPTION OF ATTACHED DOCUMENT

_____ TITLE OR TYPE OF DOCUMENT

_____ NUMBER OF PAGES

_____ DATE OF DOCUMENT

_____ OTHER

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

RIGHT THUMBPRINT
OF
SIGNER

Top of thumbprint here

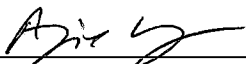
Document: Development Agreement Relative to Capital Village
Capital Village (Hearthstone Multi-Asset Entity B, L.P.)

State of California)
) ss.
County of Marin)

On October 26, 2005, before me, Angie Wong, Notary Public, personally appeared TRACY T. CARVER, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.





Notary's Signature

(Seal)

EXHIBIT LIST

- Exhibit 1 -- Legal Description of the Property
- Exhibit 2 -- Location Map
- Exhibit 3 -- Tentative Subdivision Map and Table of Land Uses
- Exhibit 4 -- SPA Handbook
- Exhibit 5 -- Form of Assignment

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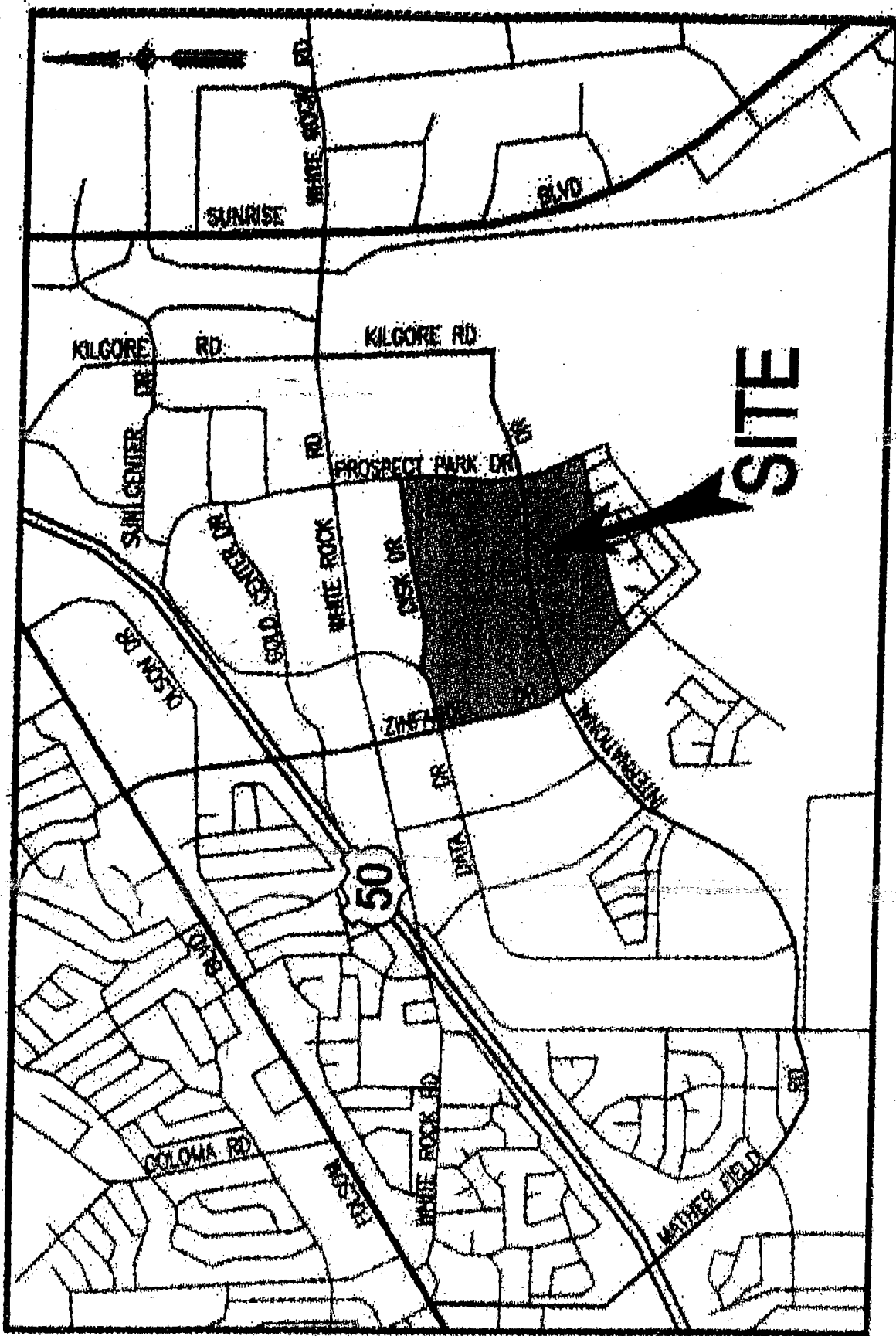


EXHIBIT 3
TENTATIVE SUBDIVISION MAP
AND TABLE OF LAND USES

EXHIBIT 4

SPA HANDBOOK

**REFERENCE TO THIS DOCUMENT IS LOCATED IN ORDINANCE NO. 06-2005
(ATTACHMENT 3, EXHIBIT B)**

EXHIBIT 5

OFFICIAL BUSINESS
Document entitled to free recording
Government Code Section 6103

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Rancho Cordova
3121 Gold Canal Drive
Rancho Cordova, CA 95670
Attn: City Clerk

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

**ASSIGNMENT AND ASSUMPTION AGREEMENT
RELATIVE TO CAPITAL VILLAGE**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (hereinafter, the "Agreement") is entered into this _____ day of _____, 200____, by and between _____, a _____ (hereinafter "Developer"), and _____, a _____ (hereinafter "Assignee").

RECITALS

1. On May 6, 2005, the City of Rancho Cordova and Developer entered into that certain agreement entitled "Development Agreement By and Between The City of Rancho Cordova and Relative to the Development known as Capital Village (hereinafter the "Development Agreement"). Pursuant to the Development Agreement, Developer agreed to develop certain property more particularly described in the Development Agreement (hereinafter, the "Subject Property"), subject to certain conditions and obligations as set forth in the Development Agreement. The Development Agreement was recorded against the Subject Property in the Official Records of Sacramento County on _____, 200__, as Instrument No. 2005-_____.

2. Developer intends to convey a portion of the Subject Property to Assignee, commonly referred to as Parcel _____, and more particularly identified and described in Exhibit A, attached hereto and incorporated herein by this reference (hereinafter the "Assigned Parcel").

3. Developer desires to assign and Assignee desires to assume all of Developer's right, title, interest, burdens and obligations under the Development Agreement with respect to and as related to the Assigned Parcel.

ASSIGNMENT AND ASSUMPTION

NOW, THEREFORE, Developer and Assignee hereby agree as follows:

1. Developer hereby assigns, effective as of Developer's conveyance of the Assigned Parcel to Assignee, all of the rights, title, interest, burdens and obligations of Developer under the Development Agreement with respect to the Assigned Parcel. Developer retains all the rights, title, interest, burdens and obligations under the Development Agreement with respect to all other property within the Subject Property owned by Developer.

2. Assignee hereby assumes all of the rights, title, interest, burdens and obligations of Developer under the Development Agreement with respect to the Assigned Parcel, and agrees to observe and fully perform all of the duties and obligations of Developer under the Development Agreement with respect to the Assigned Parcel. The parties intend hereby that, upon the execution of this Agreement and conveyance of the Assigned Parcel to Assignee, Assignee shall become substituted for Developer as the "Developer" under the Development Agreement with respect to the Assigned Parcel.

3. All of the covenants, terms and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

4. The Notice Address described in Section 27 of the Development Agreement for the Developer with respect to the Assigned Parcel shall be:

Attn: _____

IN WITNESS HEREOF, the parties hereto have executed this Agreement as of the day and year first above written. This Agreement may be signed in identical counterparts.

DEVELOPER:

ASSIGNEE:

a _____

a _____

By: _____
Print Name: _____
Title: _____

By: _____
Print Name: _____
Title: _____